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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,259	11/21/2003	Edward Paul Carlin	9437Q	2809

27752 7590 09/25/2006

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EXAMINER

HAND, MELANIE JO

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 09/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/719,259

Applicant(s)

CARLIN ET AL.

Examiner

Melanie J. Hand

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-13 and 15-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-13 and 15-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 26, 2006 has been entered.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-3, 5-13 and 15-19 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. There cannot exist multiple widths along the length of a tampon between a first distal vertex and a second distal vertex if the two vertices are located adjacent one another on one end of the tampon. Examiner has interpreted the limitation as referring to multiple widths that exist between first and second surfaces along the length of the tampon, not between first and second distal vertices.

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 2, 6-11 and 16-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Child et al (U.S. Patent No. 6,283,952).

With respect to **Claims 1,10**: Child teaches a tampon comprising an insertion end 12, a withdrawal end 13, a longitudinal axis and an outer surface. The tampon is comprised of compressed fibrous material wherein the outer surface is comprised of a plurality of first surfaces defined by axial indentations 21 and a plurality of second surfaces defined by the portions of outer surface that are defined by adjacent indentations. Each of said first and second surfaces has respective first and second proximal and distal ends. The proximal ends of the first surfaces contact the proximal ends of adjacent second surfaces to form proximal vertices, and the distal ends of the first surfaces contact the distal ends of adjacent second surfaces to form distal vertices. Because of the tapered shape of the proximal end 12 of the tampon and because the indentation extend along substantially the entire length of said tampon, the first surfaces defined by the indentations tend toward adjacent first surfaces, thus adjacent proximal vertices are closer together than the respective distal vertices, i.e. the width defined between the adjacent proximal vertices is less than the width defined between the respective adjacent distal vertices, thus, along the tampon there are multiple widths between vertices and adjacent first surfaces.

With respect to **Claims 2,11**: As can be seen in Figs. 1,2, at least a portion of said distal vertices are parallel with the longitudinal axis.

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With respect to **Claims 6,16**: Indentations 21 create areas of further compressed absorbent material having greater density, therefore the tampon has a varying density over a cross-section of the tampon.

With respect to **Claims 7,17**: Child teaches a highly compressed core 31.

With respect to **Claims 8,18**: Child teaches that withdrawal end 13 comprises withdrawal member 15.

With respect to **Claims 9,19**: Child teaches that withdrawal end 13 comprises finger indent 23.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 3, 5 and 12-15 rejected under 35 U.S.C. 103(a) as being unpatentable over Child ('952) in view of Schoelling ('859).

With respect to **Claims 3,13,14**: Child does not teach that at least a portion of the vertices are spirally-shaped. The surfaces, grooves, ribs and distal vertices taught by Schoelling are spirally shaped. (Fig. 1, ¶ 0009) Schoelling teaches that the spirally shaped ribs and vertices create a larger surface area of absorption that the bodily fluid must travel over before exiting the body, thus creating increased opportunity for absorption and prevention of leakage versus straight ribs, therefore it would be obvious to one of ordinary skill in the art to angle the indentations taught by Child to create spirally-shaped first and second surfaces and spirally shaped distal vertices so as to create a larger surface area for absorption as taught by Schoelling.

With respect to **Claims 5,15**: The tampon taught by Schoelling has a uniform density over a cross-section.

With respect to **Claim 12**: Schoelling teaches distal vertices wherein at least a portion of said vertices is parallel with the horizontal axis.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand  
Examiner  
Art Unit 3761

MJH

**TATYANA ZALUKAEVA**  
**SUPERVISORY PRIMARY EXAMINER**

